

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

JOSE COLLEGA REYES, #505402	§	
VS.	§	CIVIL ACTION NO. 6:05cv91
ROBERT D. HERRERA, ET AL.	§	

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the complaint about a prison disciplinary case should be dismissed. The Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Plaintiff are without merit.


The Plaintiff is challenging a prison disciplinary case where he was found guilty of possessing a 9 1/4 inch steel rod. The Report and Recommendation correctly explained that the Plaintiff may not bring a civil rights lawsuit about the disciplinary case unless he first shows that the result was reversed on direct appeal, expunged by executive order, declared invalid by an authorized state tribunal, or called into question by a federal court's issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See Edwards v. Balisok*, 520 U.S. 641, 648 (1997). In his

objections, the Plaintiff stated that he is challenging the disciplinary case in habeas corpus proceedings pending in the Southern District of Texas in *Reyes v. Dretke*, Civil Action No. H-04-90. Assuming that this objection is true, then the case would still have to be dismissed because the Plaintiff has not shown that he has successfully challenged the disciplinary case. His objection merely stands for the proposition that he is currently challenging the disciplinary case in federal habeas corpus proceedings. It is further noted, however, that the docket sheet from Civil Action No. H-04-90 reveals that the petition was denied on January 22, 2004. The Plaintiff may not bring a civil rights lawsuit about the disciplinary case because he has not satisfied *Balisok*. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the cause of action is **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915A(b)(1). It is further

**ORDERED** that all motions not previously ruled on are hereby **DENIED**.

SIGNED this 27<sup>th</sup> day of April, 2005.

  
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MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE